

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of : Bernard E. Brady Jr. et al.
Serial No. : 10/727,193
Examiner : Macilwinen, John Moore Jain
Filed : December 3, 2003
Group Art Unit : 2442
For : Network Event Capture and Retention
System

Confirmation No.:4674

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Dated: November 19, 2010


Anatoly Frenkel

SUMMARY OF IN-PERSON INTERVIEW WITH EXAMINER

ON NOVEMBER 16, 2010

Sir:

The Applicant's representative Anatoly Frenkel had an in-person interview with the Examiner John MacIlwinen on November 16, 2010. The summary of the interview prepared by the Applicant is presented herein.▲

In reference to the first item of the interview agenda (sent to the Examiner on October 27, 2010), the Applicant discussed arguments contained in the filed RCE of April 20, 2010 in regard to a clarification/amendment in the independent claims of the content of the collected data (added in the filed RCE) to overcome references quoted by the Examiner.

The Examiner pointed out that the terms "substantive content or a message" are not well defined; the Applicant agreed with the Examiner; one possibility for clarifying the RCE amendment for claim 129 would be:

129. (Currently Amended) A method, comprising:

collecting a plurality of transmission events provided by one or more nodes of a network into one or more data structures; and

creating one or more characterization records for at least one data structure of said one or more data structures, one or more transmission events of said plurality of the transmission events being collected to said at least one data structure of said one or more data structures, wherein at least one of said one or more characterization records comprises one or more indicators of a location or locations of one or more data elements stored in said one or more data structures and comprising a substantive content or a message any portion up to and including an unabridged version of the ~~comprised in~~ at least one of said one or more transmission events, said any portion not being comprised in any of said one or more characterization records, to allow accessing said at least one of the one or more characterization records to determine said one or more indicators of the location or locations of said one or more data elements.

Unambiguous support for the proposed amendment may be found on page 11, lines 14-17 of the originally filed patent

application. The Applicant encouraged the Examiner to carefully consider the proposed amendment while preparing an Office Action for the submitted RCE of April 20, 2010.

In reference to the second item of the interview agenda (sent to the Examiner on October 27, 2010), the Applicant discussed obviousness, primarily related to combining teachings of Khanolkar and Wiley in reference to claim 129. The Examiner expressed disagreement with most arguments presented by the Applicant.

For example, arguments (similar to the arguments presented in the Reply Brief of the related patent application No 11/441,998, pages 22-28) were presented in reference to the "improved" performance of Wiley over Khanolkar in order to solve the problem (detection of intrusion events) disclosed in both inventions of Wiley and Khanolkar. The Applicant argued that the process of parsing of the transmission event object in Khanolkar does not require storing the event and is faster ("instantaneous", see col. 7, lines 14-22 of Khanolkar) for detecting intrusion events than in Wiley. Even though the received data may be stored in Khanolkar for a future use (which is undefined in Khanolkar), it is not relevant to the problem to be solved by both Wiley and Khanolkar and thus not providing any incentive for a person of the ordinary skill in the art to incorporate teaching of Wiley utilizing a dataset technique for storing and retrieving information for determining of the intrusion events into Khanolkar, because the procedure for determining the intrusion event in Wiley et al. is most likely slower than the parsing technique disclosed by Khanolka. The Examiner disagreed with the presented arguments.

Further, it was argued by the Applicant that incorporating Wiley into Khanolka will limit the content of the event object

created in Khaonlka to only those event features which are disclosed by Wiely which will destroy the intended function of Khanolka. The Examiner disagreed with the presented arguments.

Moreover, combination of Khanolkar et al. and Wiley et al. will teach away from the subject matter recited in the present patent application, e.g., in claim 129, especially in light of the claim amendment submitted with the RCE.

Furthermore, the Applicant proposed (per agenda sent to the Examiner on October 27, 2010) to discuss the concept of "teaching away", "reasonable expectation of success", "problem to be solved", "obvious to try", and/or "reason to combine" concepts as possibly applied to combining Khanokar et al. and Wiley et al. in light of new KSR guidelines published by the USPTO on September 1, 2010: Federal Register, 75, No. 169, 53643 Examination Guidelines Update: Developments in the Obviousness Enquiry After KSR v Teleflex. The Examiner declined the proposed discussion, because he was not properly instructed and trained by the USPTO in regard to these new KSR guidelines.

In reference to the third item of the interview agenda (sent to the Examiner on October 27, 2010), the Applicant proposed a few option for clarifying the language of the proposed amendment (see above). The Examiner stated that he would consider such proposals while working on the current RCE of April 20, 2010. The Applicant encouraged the Examiner to carefully consider the proposed amendment and communicate possible counter-proposals (if any) to the Applicant while preparing an Office Action for the submitted RCE of April 20, 2010.

CONCLUSION

The objections and rejections of the Final Office Action of January 22, 2010 and advisory action of March 22, 2010, having been obviated by amendment or shown to be inapplicable in RCE submitted to the USPTO on April 20, 2010; withdrawal thereof is requested and passage of all claims to issue is earnestly solicited.

Respectfully submitted,

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Date: November 19, 2010



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